

CALIFORNIA HORSE RACING BOARD
TITLE 4, DIVISION 4, CALIFORNIA CODE OF REGULATIONS

NOTICE OF PROPOSAL TO ADD
RULE 1489.2, REHABILITATION CRITERIA FOR EVALUATION OF DENIED,
SUSPENDED OR REVOKED OCCUPATIONAL LICENSE

The California Horse Racing Board (Board, or CHRB) proposes to add the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The proposed addition of Rule 1489.2, Rehabilitation Criteria for Evaluation of Denied, Suspended or Revoked Occupational License, will align the Board with the requirements of Business and Professions Code section 482, and help provide consistent evaluation of applicants and licensees who have committed acts, offenses, or crimes that permit the denial, suspension, or revocation of a license.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, November 19, 2015**, or as soon after that as business before the Board will permit, at the **Del Mar Surfside Race Place, (Downstairs General Admission Area) 2260 Jimmy Durante Blvd., Del Mar, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m., on November 2, 2015**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Philip Laird, Staff Counsel
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 263-6025
Fax: (916) 263-6022
E-Mail: pjlaird@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 482 and 19440, Business and Professions Code. Reference: Sections 480, 490, 19460, and 19461, Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 482 requires that the Board adopt criteria to evaluate the rehabilitation of a person who has committed an act, offense, or crime when considering the denial of a license under section 480, or the suspension or revocation of a license under section 490. Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19460 provides that all licenses granted by the Board are subject to all rules, regulations, and conditions from time to time prescribed by the Board and shall contain such conditions as are deemed necessary or desirable by the Board. Business and Professions Code section 19461 states that every license granted under that chapter is subject to suspension or revocation by the Board. Board Rule 1489, Grounds for Denial or Refusal of License, names the reasons for which the Board may refuse to issue a license or deny a license to any person. Finally, Board Rule 1900, Grounds for Suspension or Revocation, provides that any rule which is a ground for denial of a license is also ground for suspension or revocation of a license.

The proposed addition of Rule 1489.2 will align the CHRB with the requirements of Business and Professions Code section 482. The proposed amendment will also aid CHRB investigators and licensing staff in consistently evaluating the rehabilitation of applicants and licensees who have committed acts, offenses, or crimes which would otherwise permit the denial, suspension, or revocation of their license.

POLICY STATEMENT OVERVIEW OF ANTICIPATED BENEFITS OF PROPOSAL

To date, the Board has been without criteria for evaluating the rehabilitation of applicants and licensees who have committed certain acts, offenses, or crimes which would otherwise permit the denial, suspension, or revocation of their CHRB license. The proposed addition of Rule 1489.2 will benefit the Board by establishing such criteria, consequently bringing the Board into conformity with Business and Professions Code section 482. Additionally, the proposed criteria will benefit CHRB investigators and licensing staff by providing guidance on how to consistently evaluate the rehabilitation of applicants and licensees who have committed acts, offenses, or crimes that permit the denial, suspension, or revocation of their license. Finally, the proposed addition of Rule 1489.2 will benefit applicants and licensees by insuring that they are afforded an opportunity to show they have been rehabilitated after committing certain past crimes or acts so that they may still be granted or maintain a CHRB license.

CONSISTENCY EVALUATION

During the process of developing these regulation amendments, the Board has conducted a search of any similar regulations on this topic and has concluded that the regulation is neither inconsistent nor incompatible with existing state regulations.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Sections 17500 through 17630: none.

Other non-discretionary costs or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed addition of Rule 1489.2 will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: none.

Cost impact on representative private persons or businesses: none.

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

RESULT OF ECONOMIC IMPACT ANALYSIS

The adoption of the proposed addition of Rule 1489.2 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California. The proposed addition of Rule 1489.2 will bring the Board into conformity with the requirements of Business and Professions Code section 482 by establishing rehabilitation criteria that CHRB staff will consider when evaluating an applicant or licensee. Additionally, the proposed criteria will assist CHRB investigators and licensing staff in conducting consistent evaluations of applicants and licensees who have committed acts, offenses, or crimes that permit the denial, suspension, or revocation of their license. Ultimately, the proposed addition of Rule 1489.2 will insure that an applicant or licensee is afforded an opportunity to show they have been rehabilitated after committing certain past crimes or acts so that they may still be granted or maintain a CHRB license.

Effect on small businesses: none. The proposal to add Rule 1489.2 does not affect small businesses because horse racing associations in California are not classified as small businesses under Government Code Section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed

action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Philip Laird, Staff Counsel
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6025
E-mail: pjlaird@chr.ca.gov

If the person named above is not available, interested parties may contact:

Andrea Ogden, Manager
Policy, Regulations and Legislation
Telephone: (916) 263-6033

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Philip Laird, or the alternative contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulation should be sent to the attention of Philip Laird at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS:

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Philip Laird at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulation and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.

INITIAL STATEMENT OF REASONS

RULE 1489.2 REHABILITATION CRITERIA FOR EVALUATION OF DENIED, SUSPENDED OR REVOKED OCCUPATIONAL LICENSE.

SPECIFIC PURPOSE OF THE REGULATION

The proposed addition of Rule 1489.2, Rehabilitation Criteria for Evaluation of Denied, Suspended or Revoked Occupational License, will align the Board with the requirements of Business and Professions Code section 482, and help provide consistent evaluation of applicants and licensees who have committed acts, offenses, or crimes that permit the denial, suspension, or revocation of a license.

PROBLEM

Business and Professions Code section 482 states that every board that falls under the provisions of the Business and Professions Code shall adopt criteria to evaluate the rehabilitation of a person who has committed an act, offense, or crime when considering the denial of a license under section 480, or the suspension or revocation of a license under section 490. Presently, the California Horse Racing Board (CHRB) does not have such criteria in place. Adoption of the proposed rehabilitation criteria will bring the Board in line with the requirements of section 482, and help provide consistent evaluation of the rehabilitation of applicants and licensees who have committed acts, offenses, or crimes which would otherwise permit the denial, suspension, or revocation of their CHRB license.

NECESSITY

Business and Professions Code section 482 requires that every board that falls under the provisions of the Business and Professions Code shall adopt criteria to evaluate the rehabilitation of a person who has committed an act, offense, or crime when considering the denial of a license under section 480, or the suspension or revocation of a license under section 490. This necessitates the addition of Board Rule 1489.2, which will establish rehabilitation criteria for the CHRB. Specifically, proposed Rule 1489.2 will establish that when considering the denial, suspension, or revocation of a license under Business and Professions Code sections 480 and 490, the CHRB may consider six criteria to help it determine if the applicant or licensee has been rehabilitated. These six criteria will be listed as subsections (a) through (f).

Subsection (a) specifies that the CHRB may consider the nature and severity of the act and its relation to horse racing. This is necessary because the nature and severity of the act as well as its relation to horse racing will help determine the degree and nature of rehabilitation needed to show fitness for licensure. Subsection (b) allows the CHRB to consider the total criminal record of the applicant or licensee. This is necessary because the extent and recurrence of an applicant or licensee's prior criminal history will help determine the sincerity of their rehabilitation efforts as well as the extent of rehabilitation necessary to show fitness for licensure. Subsection (c) allows the CHRB to consider the amount of time that has elapsed since commission of the act. This is necessary because it will help indicate the validity of the rehabilitation evidence offered by the applicant or licensee, as well as indicate if sufficient time has passed to allow the applicant or licensee to genuinely reform his or her behavior. Subsection (d) allows the CHRB to consider the extent to which the applicant or licensee has complied with terms of parole,

probation, and restitution. This is necessary because compliance with terms of parole, probation, and restitution indicates rehabilitation by showing that the applicant or licensee obeyed the instructions of the presiding court and has done what was required to make up for their criminal behavior. Subsection (e) permits the CHRB to consider the applicant or licensee's credibility and his or her acceptance of responsibility for the act he or she committed. These are necessary because a lack of credibility or a lack of remorse are strong signs that a person has not been rehabilitated from past criminal behavior, indicating they should not be licensed. Finally, subsection (f) has the CHRB consider evidence of rehabilitation, which may include written statements from third parties. This is necessary because rehabilitation evidence provides the best indication of whether or not—and to what extent—a person has actually been rehabilitated after previously committing an act or offense. Rehabilitation evidence can come in many forms, and it is this information, considered in conjunction with subsections (a) through (e), that will best inform CHRB staff whether or not an applicant or licensee should be granted a CHRB license. Furthermore, the requirements listed for third party written statements are necessary because they will enable the CHRB to determine the weight and credibility of the third party's statements by disclosing the nature and depth of their relationship with the applicant or licensee. Additionally, the requirement that the third party sign their statement under the penalty of perjury is necessary to ensure that nobody attesting to an applicant or licensee's rehabilitation make any false statements. By expressly acknowledging that any false statement made is punishable by California law, third parties providing written statements will be on notice of the potential repercussions of knowingly making untrue or incorrect assertions, which will encourage honest statements and heighten third party credibility.

The addition of Rule 1489.2 is also necessary generally because it will bring the Board in line with the requirements of Business and Professions Code section 482 by establishing criteria that aids CHRB investigators and licensing staff in determining whether an applicant or licensee who has committed a crime or act has been sufficiently rehabilitated to justify issuance or renewal of a CHRB license. This will not only bring the Board into conformity with the Business and Professions Code, but will also enable CHRB staff to make consistent determinations for applicants and licensees throughout California.

BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

To date, the Board has been without rehabilitative criteria for evaluating whether or not to license applicants and licensees who have committed certain acts, offenses, or crimes. Adoption of the proposed regulation would address this issue by establishing such criteria, bringing the Board in conformity with Business and Professions Code section 482. Furthermore, the proposed criteria will provide clarity for applicants and licensees who are attempting to show they have been rehabilitated, as well as enable the consistent evaluation of applications and renewals by CHRB investigators and licensing staff. Also, the proposed addition of Rule 1489.2 will ensure that applicants and licensees are not treated in an unreasonable or discriminatory manner that continues to punish them for certain past crimes or acts when they can show sufficient rehabilitation. Accordingly, this amendment will allow for the licensure of more qualified applicants in California's horse racing industry.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS OR DOCUMENTS

The Board did not rely on any technical, theoretical, and/or empirical study, reports or documents in proposing the amendment of the regulation.

ECONOMIC IMPACT ASSESSMENT

The results of the Board's Economic Impact Assessment as required by Government Code Section 11346.3(b) are as follows:

- The proposed regulation will not impact the creation or elimination of jobs within the State of California.
- The proposed regulation will not have an impact on the creation of new businesses or the elimination of existing businesses in the State of California.
- The proposed regulation will not have an impact on the expansion of existing businesses in the State of California.
- The proposed regulation will benefit California by promoting the safety and welfare of horse and rider and will not benefit the State's environment.

The Board has made the initial determination that the proposed addition of Rule 1489.2 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states. The addition of Rule 1489.2 is merely intended to aid CHRB investigators and licensing staff in determining whether an applicant or licensee who has committed a crime or act has been sufficiently rehabilitated to justify issuance or renewal of a CHRB license. This will not impact businesses in any way, and only serves to regularize and update the evaluation of CHRB license applications.

Purpose:

The proposed addition of Rule 1489.2 will bring the Board in line with the requirements of Business and Professions Code section 482. The proposed addition will aid CHRB investigators and licensing staff in determining whether an applicant or licensee who has committed a crime or act has been sufficiently rehabilitated to justify issuance or renewal of a CHRB license. This will not only bring the Board into conformity with the Business and Professions Code, but will also enable CHRB staff to make consistent determinations for applicants and licensees throughout California.

The Creation or Elimination of Jobs Within the State of California

The proposed addition of Rule 1489.2 will aid CHRB investigators and licensing staff in determining whether an applicant or licensee who has committed a crime or act has been sufficiently rehabilitated to justify issuance or renewal of a CHRB license. This regulation will only impact individuals applying for a CHRB license, and as such only has an effect on horseracing and not any other type of California business. Therefore, CHRB has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs in the State of California.

The Creation of New Businesses or the Elimination of Existing Businesses within the State of California

The proposed addition of Rule 1489.2 will aid CHRB investigators and licensing staff in determining whether an applicant or licensee who has committed a crime or act has been sufficiently rehabilitated to justify issuance or renewal of a CHRB license. This regulation will only impact individuals applying for a CHRB license, and as such only has an effect on horseracing and not any other type of California

business. Therefore, CHRB has determined this regulatory proposal will not have an impact on the creation of new businesses or the elimination of existing businesses in the State of California.

The Expansion of Businesses Currently Doing Business Within the State of California

The proposed addition of Rule 1489.2 will aid CHRB investigators and licensing staff in determining whether an applicant or licensee who has committed a crime or act has been sufficiently rehabilitated to justify issuance or renewal of a CHRB license. This regulation will only impact individuals applying for a CHRB license, and as such only has an effect on horseracing and not any other type of California business. Therefore, CHRB has determined that the proposed regulatory action is not relevant to the expansion of businesses currently doing business in the State of California.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed addition of Rule 1489.2 is a benefit to California because it ensures that applicants and licensees are not treated in an unreasonable or discriminatory manner that continues to punish them for certain past crimes or acts when they can show sufficient rehabilitation. Accordingly, this amendment will allow for the licensure of more qualified applicants in California's horse racing industry. These regulations do not benefit the state's environment.

ALTERNATIVE TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS OR BUSINESSES

The Board has determined that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION

The proposed addition of Rule 1489.2 was discussed at the April 16, 2015 Regular Board Meeting. No alternatives to the recommendation were proposed by the Board or by any other individual or entity at the meeting. No subsequent alternative recommendations were made prior to the notice. The Board invites any interested party to submit comments which offer any alternative proposal.

California Horse Racing Board
September 18, 2015

CALIFORNIA HORSE RACING BOARD
TITLE 4. CALIFORNIA CODE OF REGULATIONS
ARTICLE 4. OCCUPATIONAL LICENSES
PROPOSED ADDITION OF
RULE 1489.2. REHABILITATION CRITERIA FOR EVALUATION OF DENIED, SUSPENDED OR
REVOKED OCCUPATIONAL LICENSE

1489.2. Rehabilitation Criteria for Evaluation of Denied, Suspended or Revoked Occupational License

When considering the denial of a license under Business and Professions Code section 480, or the suspension or revocation of licensure under Business and Professions Code section 490, on the grounds that the person has committed an act or been convicted of a crime, the California Horse Racing Board will evaluate the rehabilitation of such person and his or her eligibility for licensure, and may consider the following criteria:

(a) The nature and severity of the act(s) and/or offense(s), including its relation to horse racing or pari-mutuel wagering and the protection of the public.

(b) The total criminal record, including evidence of any act(s) and/or offense(s) committed subsequent to the act(s) or offense(s) under consideration as grounds for denial, suspension or revocation which also could be considered grounds for denial, suspension, or revocation under Business and Professions Code sections 480 or 490.

(c) The time that has elapsed since commission of the act(s) or offense(s).

(d) The extent to which the person seeking licensure or the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the person or licensee.

(e) The credibility of the person seeking licensure or the licensee, and his or her acceptance of responsibility and remorse for the conduct.

(f) Evidence, if any, of rehabilitation submitted by the person seeking licensure or by the licensee. If the evidence of rehabilitation consists of written statements by third parties in support of the

person seeking licensure or the licensee, the written statements should include a description of their relationship to the person or licensee, a description of the length of time their relationship has existed, a description of the rehabilitative efforts of the person seeking licensure or the licensee and should contain the following sentence at the end: “I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.” The written statement should be signed by the third party making the statement and dated.

Authority: Sections 482 and 19440,
Business and Professions Code.

Reference: Sections 480, 490, 19460 and 19461,
Business and Professions Code.